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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

Michael Z. Hermalyn and FVP, LLC,

Plaintiffs,

vs.

DraftKings, Inc.,

Defendant.

Case No. 2:24-cv-00918

Case No. 2:24-cv-00997

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
ATTORNEYS' FEES AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

*[Filed concurrently with Brian Decl.;
Armillei Decl.; Kristovich Decl.;
[Proposed] Order]*

Date: March 11, 2024
Time: 9:00 a.m.
Judge: Hon. Mark C. Scarsi
Courtroom: 7C
Trial Date: None Set

1 **TO THE COURT, ALL PARTIES, AND ALL ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on March 11, 2024, at 9:00 a.m., in
 3 Courtroom 7C of the above-entitled court, located at 350 W. 1st Street, 7th Floor,
 4 Los Angeles, California 90012, the Honorable Mark C. Scarsi presiding, Plaintiffs
 5 Michael Z. Hermalyn and FVP, LLC (“Fanatics VIP”) (collectively with Mr.
 6 Hermalyn, “Plaintiffs”) shall move, and hereby do move, under 28 U.S.C. § 1447(c)
 7 for an order requiring “payment of just costs and any actual expenses, including
 8 attorney fees, incurred as a result of” DraftKings’ successive improper removals of
 9 this case on February 1 and February 5, 2024.

10 This motion is timely. The Court twice remanded this case—on February 5
 11 and 8, 2024—but under *Moore v. Permanente Med. Grp., Inc.*, 981 F.2d 443, 445
 12 (9th Cir. 1992), it retained jurisdiction in each instance to consider any post-remand
 13 motion for fees and costs. The Court set a briefing schedule that required Plaintiffs
 14 to file this motion by February 12, 2024. (Case No. 2:24-cv-00918, ECF No. 14;
 15 Case No. 2:24-cv-00997, ECF No. 19.) Plaintiffs asked DraftKings to resolve the
 16 issue by stipulation to advance the “just, speedy, and inexpensive determination” of
 17 this matter by obviating the need for further expenditure of resources in federal
 18 court, Fed. R. Civ. P. 1, but the parties were unable to come to a resolution. *See*
 19 Kristovich Decl. ¶ 2, Ex. A

20 This Motion is based on this Notice of Motion and Memorandum of Points
 21 and Authorities; the accompanying Declaration of Brad D. Brian, Declaration of
 22 David C. Armillei, and Declaration of Bethany W. Kristovich; all pleadings and
 23 papers of record on file in these cases, and such additional authority and argument
 24 as may be presented at or before the time this motion is submitted and heard.

1 DATED: February 12, 2024

Respectfully submitted,

2 MUNGER, TOLLES & OLSON LLP

3
4
5 By: /s/ Brad D. Brian
6 BRAD D. BRIAN

7 *Attorneys for Plaintiff*
8 MICHAEL Z. HERMALYN

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11 SULLIVAN, LLP

12 By: /s/ David C. Armillei
13 DAVID C. ARMILLEI¹

14 *Attorneys for Plaintiff*
15 FVP, LLC

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27 ¹ Signed electronically by Brad D. Brian with the concurrence of David C. Armillei,
28 pursuant to L.R. 5-1(i)(3).

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Motion consolidates Plaintiff Michael Hermalyn and Plaintiff FVP,
 4 LLC's requests for attorneys' fees incurred as a result of Defendant DraftKings,
 5 Inc.'s two improper removals of Plaintiffs' state court action, one on February 1 and
 6 the second on February 5. Both of DraftKings' removals were objectively
 7 unreasonable: DraftKings attempted the first removal even though no basis for
 8 federal jurisdiction appeared on the face of the complaint and apparently without
 9 conducting any investigation whatsoever. Then, the same day that the Court
 10 remanded the case and after Mr. Hermalyn filed an application for a TRO in
 11 California state court, DraftKings removed *again*, this time alleging that Plaintiffs
 12 had perpetrated a fraud on the court by having the temerity to bring valid state law
 13 claims on behalf of the corporate entity that employs Mr. Hermalyn in California.

14 As the Court recognized in its remand orders, DraftKings' removals lacked
 15 any foundation in law or in fact. Worse still, DraftKings executed them with
 16 apparently complete indifference to their merits, evidently employing removal as a
 17 litigation tactic to delay Mr. Hermalyn from being heard on an emergency basis in
 18 state court until DraftKings could file its own lawsuit in the District of
 19 Massachusetts. This misconduct warrants, at the least, an award of attorneys' fees
 20 under 28 U.S.C. § 1447(c).

21 The fees that Plaintiffs have requested are reasonable. The rates charged by
 22 Plaintiffs' counsel are comparable to the prevailing rates in the Los Angeles legal
 23 market for firms of a similar caliber and comparable to the rates charged by
 24 DraftKings' counsel, and courts across the country consistently have found those
 25 rates reasonable. The hours expended by Plaintiffs' counsel were also reasonable.
 26 DraftKings' litigation tactics required Plaintiffs' counsel to spend virtually an entire
 27 week attempting to get their case remanded twice on an emergency basis to the
 28 rightful state forum, where each time Mr. Hermalyn was about to seek *ex parte*

1 relief. Because DraftKings concocted a different (though equally baseless) theory to
 2 justify its second removal, Plaintiffs were forced to brief two separate remand
 3 motions in under a week. In analogous cases, courts have awarded fees for a
 4 comparable number of hours incurred as a result of an improper removal.

5 Plaintiffs respectfully request that the Court award payment of the attorneys’
 6 fees incurred as a result of DraftKings’ successive improper removals. Given
 7 DraftKings’ obviously strategic use of the removal process and its failure to conduct
 8 a good-faith investigation before removing, Plaintiffs also request that the Court
 9 enter an order requiring DraftKings to seek approval from this Court before
 10 submitting any further filings in federal court.

11 **II. BACKGROUND**

12 Mr. Hermalyn recently moved to California to accept a job with FVP, LLC
 13 (hereafter, “Fanatics VIP”), a California-based affiliate of the digital sports platform
 14 Fanatics Holdings, Inc. (Case No. 2:24-cv-00918, ECF No. 1-5 (Hermalyn Decl.
 15 ¶¶ 2-4).) Mr. Hermalyn’s former employer was DraftKings. While he worked for
 16 DraftKings, Mr. Hermalyn was required to sign, as a condition of his employment,
 17 nearly a dozen agreements containing broad and onerous post-employment
 18 restrictive covenants, which included non-compete, employee non-solicit and no-
 19 hire, and client non-solicit provisions. (*Id.* ¶¶ 12-16 & Exs. A & B.)

20 After Mr. Hermalyn resigned from DraftKings and accepted his employment
 21 offer from Fanatics VIP, Mr. Hermalyn and Fanatics VIP filed suit in California
 22 state court to void the anticompetitive restrictions in Mr. Hermalyn’s employment
 23 contract under black letter California law. They invoked recent amendments
 24 permitting them to seek injunctive relief and other remedies against a former
 25 employer like DraftKings to prevent enforcement of the restrictive covenants. *See*
 26 Cal. Bus. & Prof. Code §§ 16600, 16600.5. That same day, Mr. Hermalyn provided
 27 notice to DraftKings of his intention to file an ex parte application for a temporary
 28 restraining order. The ex parte papers were served on DraftKings, and Mr.

1 Hermalyn was clear that he would appear the following morning in state court to
2 seek relief that would allow him to get to work right away.²

3 That was over a week ago. Since then, DraftKings has done everything
4 possible to obstruct and delay Mr. Hermalyn from having his day in a California
5 court. It has done so while it separately raced to a Massachusetts court to seek a
6 TRO there.

7 **A. DraftKings' First Improper Removal**

8 First, at 11:50 p.m. on February 1, mere hours after receiving the complaint
9 and Mr. Hermalyn's ex parte papers, and apparently without any investigation,
10 DraftKings served Plaintiffs with a Notice of Removal invoking the Court's
11 diversity jurisdiction. (Case No. 2:24-cv-00918, ECF No. 1 at 8.) The Notice
12 alleged that there was complete diversity of citizenship between the parties because
13 "Hermalyn is a citizen of New Jersey, (or, according to him, California), Fanatics
14 VIP is a citizen of California, and DraftKings is a citizen of Nevada and
15 Massachusetts." (*Id.* at 9.)

16 The allegation concerning Fanatics VIP's citizenship was false. Fanatics VIP
17 is a limited liability company, and for purposes of diversity jurisdiction, "an LLC is
18 a citizen of every state of which its owners/members are citizens." *Johnson v.*
19 *Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Fanatics VIP's
20 sole member, FVP, Inc., is a Nevada corporation, which makes Fanatics VIP a
21 citizen of Nevada. (Case No. 2:24-cv-00918, ECF No. 12-1 (Winiarski Decl. ¶¶ 6-
22
23

24 _____
25 ² The following morning, Mr. Hermalyn's counsel received notice from the
26 California Superior Court's filing service that the ex parte application had been
27 rejected. (Case No. 2:24-cv-00997, ECF No. 1-24 at 22.) By that time, however,
28 DraftKings had already removed the case and divested the Superior Court of
jurisdiction in any event, depriving Mr. Hermalyn of the opportunity to seek an
expedited TRO.

1 7).) Because DraftKings and Fanatics VIP are both Nevada citizens, there was not
2 complete diversity between the parties.

3 Mr. Hermalyn's counsel asked DraftKings to stipulate to a remand,
4 explaining that "time is of the essence" because of Mr. Hermalyn's urgent need for
5 relief from the California court. (Case No. 2:24-cv-00997, ECF No. 1-24.)
6 DraftKings refused. Plaintiffs then proceeded to seek expedited remand from the
7 Court by filing papers that day.

8 Those papers required a tremendous amount of work to put together. The
9 Motion to Remand alone was a 20-page document that cited 22 cases and several
10 other legal authorities. The motion was accompanied by the ex parte application,
11 which required its own research, and additional supporting declarations that took
12 time and effort to draft. There were six attorneys from Munger, Tolles, & Olson and
13 five from Quinn Emanuel who quickly jumped into the fray, working on
14 declarations, satisfying meet-and-confer obligations, reviewing local rules, and
15 researching the substantive law. They then prepared the actual motions and
16 supporting documents, all in a single day's time. By about 5:30 p.m. that same
17 evening, February 2, 2024, Plaintiffs had filed their Motion to Remand and Ex Parte
18 Application to Shorten Time. All told, those filings comprise approximately 40
19 pages. Over the following days, the team drafted a reply brief (that was ultimately
20 not filed due to the Court's remand) and prepared for a possible hearing.

21 On February 5, the Court remanded the case. (Case No. 2:24-cv-00918, ECF
22 No. 14.) The Court's order noted that its lack of subject matter jurisdiction was
23 "clear and inarguable" because DraftKings had "not offer[ed] facts probative of the
24 citizenship of FVP's owner or members" and had accordingly failed to carry its
25 burden to establish grounds for removal. (*Id.*)

26 **B. DraftKings' Second Improper Removal**

27 Mr. Hermalyn moved quickly to refile his state court papers the same day.
28 Refiling required substantial effort. Counsel had to revise the papers to reflect the

1 removal and remand, provide new notice, satisfy additional meet-and-confer
2 obligations, and draft new supporting declarations substantiating Mr. Hermalyn's
3 compliance with state court procedures for ex parte relief. (*See* Case No. 2:24-cv-
4 00997, ECF No. 1-22 through 26.)

5 Faced again with the imminent prospect that Mr. Hermalyn could be heard in
6 state court, DraftKings removed the case *again*, in the middle of the night (1:15
7 a.m.), fewer than 24 hours after the Court had remanded it. There were no factual
8 developments or changes in circumstances between the first and second removals:
9 DraftKings simply did not agree with the Court's remand or, more likely, did not
10 care, as it was desperate to avoid California state court and buy more time to file in
11 Massachusetts.

12 In effecting this second removal, DraftKings failed to file a Notice of Related
13 Case, as required by Local Rule 83-1.3. The requirement to notify the District Court
14 of an obviously related case is hardly an obscure rule; sophisticated counsel are
15 surely aware of it. Indeed, a search of the Central District of California's docket
16 reveals *many* instances of DraftKings' counsel's firm filing or receiving Notices of
17 Related Cases in this District. (Kristovich Decl. ¶ 3, Ex. B.) Both Counsels Smith
18 and Fogelman have individually filed Notices of Related Cases along with Notices
19 of Removal from state court—and Counsel Fogelman did so while representing
20 DraftKings. (*Id.* ¶¶ 3–7, Exs. B-D (docket search results), Ex. E (*Huizar v.*
21 *DraftKings*, C.D. Cal. No. 2:15-cv-009956-BRO-RAO, ECF No. 1), Ex. F
22 (*Childress v. Ford Motor Company*, C.D. Cal. No. 5:23-cv-01949-JWH-SHK, ECF
23 No. 1).) One is left to conclude that the failure to file the Notice in this case was
24 designed to (and did) slow down remand. In fact, DraftKings bought itself enough
25 time by filing the second improper removal to file a lawsuit in Massachusetts that
26 same day, seeking a TRO and expedited discovery. *DraftKings Inc. v. Hermalyn*,
27 Civ. A. No. 1:24-cv-10299 (D. Mass.). Meanwhile, because of the removal, Mr.
28 Hermalyn was unable to seek relief in California state court.

1 DraftKings’ second Notice of Removal offered a new theory, rife with
2 inflammatory allegations: that Plaintiffs had perpetrated a “fraud on the Court” by
3 bringing state-law claims on behalf of Fanatics VIP, which DraftKings alleged was
4 a “sham.” (Case No. 2:24-cv-00997, ECF No. 1 at 6.) Specifically, DraftKings
5 alleged—again, without evidence—that Plaintiffs had committed actual fraud in the
6 pleading of jurisdictional facts because Fanatics VIP had been formed only recently,
7 to employ Mr. Hermalyn and as a vehicle to expand Fanatics’ California operations.
8 (*Id.*)

9 Plaintiffs again sought expedited relief from this Court. (Case No. 2:24-cv-
10 00997, ECF Nos. 8, 10.) Plaintiffs prepared a second Motion to Remand addressing
11 DraftKings’ new arguments, explaining that the “sham” label was inapplicable to
12 this context and that no law prohibits a party from organizing itself to take
13 advantage of favorable state law. (*See, e.g.*, Case No. 2:24-cv-00997, ECF No. 8 at
14 9-13.) DraftKings opposed and submitted a supplemental opposition, requiring
15 Plaintiffs to prepare two reply briefs. (*Id.*, ECF Nos. 10 & 15 (oppositions), 11 and
16 16 (replies).)

17 On February 8, the Court remanded the case on its own motion—again.
18 (Case No. 2:24-cv-00997, ECF No. 19.) The Court rejected DraftKings’ fraud
19 theory, observing that DraftKings had relied entirely on “speculation,”
20 “conjecture[,] and invective” but had “offer[ed] no evidence” of fraud, “no evidence
21 of untoward acts” by Plaintiffs, and “[n]o facts” to support its arguments. (*Id.*)

22 In both remand orders, the Court retained jurisdiction to consider a motion to
23 recover fees and costs under 28 U.S.C. § 1447(c). Plaintiffs attempted to meet and
24 confer with DraftKings to resolve the issue by stipulation, but the parties were
25 unable to come to a resolution. (Kristovich Decl. ¶ 2.)
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1 **III. ARGUMENT**

2 “If at any time before final judgment it appears that the district court lacks
3 subject matter jurisdiction, the case shall be remanded. An order remanding the
4 case may require payment of just costs and any actual expenses, including attorney
5 fees, incurred as a result of the removal.” 28 U.S.C. § 1447(c).

6 The standard for awarding fees under § 1447(c) “turns on the reasonableness
7 of the removal.” *Woolsey v. State Farm Gen. Ins. Co.*, -- F. Supp. 3d --, 2023 WL
8 3480870, at *4 (C.D. Cal. 2023). A court may award costs and fees “where the
9 removing party lacked an objectively reasonable basis for seeking removal.”
10 *Grancare, LLC v. Thrower ex rel. Mills*, 889 F.3d 543, 552 (9th Cir. 2018). District
11 courts have “wide discretion” in awarding fees, and they may do so if the removal
12 was “wrong as a matter of law.” *Ansley v. Ameriquist Mortg. Co.*, 340 F.3d 858,
13 864 (9th Cir. 2003). An award on remand “is not a punitive award against
14 defendants; it is simply reimbursement to plaintiffs of wholly unnecessary litigation
15 costs the defendant inflicted.” *Moore v. Permanente Med. Grp., Inc.*, 981 F.2d 443,
16 447 (9th Cir. 1992). Accordingly, the decision to award fees does not require a
17 finding of bad faith. *Id.* at 446.

18 “Although bad faith is not a prerequisite to awarding fees, ‘[t]he nature of the
19 conduct of the removing defendant[] is nevertheless relevant to the exercise of
20 discretion.’” *Braco v. MCI Worldcom Commc’ns, Inc.*, 138 F. Supp. 2d 1260, 1270-
21 71 (C.D. Cal. 2001) (citations omitted). Because an improper removal “delays
22 resolution of the case, imposes additional costs on both parties, and wastes judicial
23 resources,” assessing fees on remand is warranted to deter removals sought for those
24 purposes, provided the award would not “undermin[e] Congress’ basic decision to
25 afford defendants a right to remove.” *Martin v. Franklin Cap. Corp.*, 546 U.S. 132,
26 140 (2005).

1 **A. DraftKings’ Removals Lacked an Objectively Reasonable Basis**

2 **1. The First Removal Was Patently Deficient Under Law It**
 3 **Cited and Done Without Any Investigation Whatsoever**

4 DraftKings’ first removal was unreasonable because it was done without any
 5 legal basis, without any reasonable investigation of the relevant jurisdictional facts,
 6 and for an improper motive.

7 “[N]otice of removability under § 1446(b) is determined through examination
 8 of the four corners of the applicable pleadings.” *Harris v. Bankers Life & Cas. Co.*,
 9 425 F.3d 689, 694 (9th Cir. 2005). The Ninth Circuit has recognized that “diversity
 10 of citizenship is a federal, not a state, concern,” so “it is not uncommon for a state
 11 court pleading to omit the necessary facts needed to determine diversity.” *Id.* at
 12 693. “If no ground for removal is evident in [an initial] pleading, *the case is ‘not*
 13 *removable’ at that stage.*” *Id.* at 694 (emphasis added); *see also* 28 U.S.C.
 14 § 1446(b)(3). When faced with a case that is not removable due to an indeterminate
 15 pleading, the defendant’s proper recourse is to conduct an investigation into the
 16 jurisdictional facts—whether independently or by seeking discovery—while the
 17 case remains pending in state court. *Gralnik v. DXC Tech., Inc.*, 2021 WL 5203333,
 18 at 6 (C.D. Cal. Nov. 8, 2021) (quoting *Rotella v. Emeritus Corp.*, 2010 WL
 19 5141857, at *5 n.1 (N.D. Cal. 2010)). “By assuring that removal occurs once the
 20 jurisdictional facts supporting removal are evident,” federal courts “ensure respect
 21 for the jurisdiction of state courts.” *Harris*, 425 F.3d at 698.

22 DraftKings’ Notice of Removal demonstrated a flagrant disregard for these
 23 principles. Plaintiffs’ complaint did not include any allegations about the
 24 citizenship of Fanatics VIP—nor was it required to, as diversity of citizenship is not
 25 a state concern. *Harris*, 425 F.3d at 694. Without that information, DraftKings
 26 could not have determined from the face of the pleadings whether the case was
 27 removable because it could not have ascertained the citizenship of one of the parties.
 28

1 DraftKings ignored the bright-line rule from *Harris* in its rush to delay Mr.
 2 Hermalyn's state proceedings at all costs. DraftKings did not offer any explanation
 3 for its purported view that Fanatics VIP was a citizen only of California.
 4 DraftKings evidently knew the rules: Its Notice acknowledged that Fanatics VIP is
 5 an LLC and cited *Johnson v. Columbia Properties Anchorage, LP* for the
 6 proposition that "an LLC is a citizen of every state of which its owners/members are
 7 citizens." (ECF No. 1 at 9 (Case No. 2:24-cv-00918).) And yet, the Notice made no
 8 allegations about Fanatics VIP's owners or members. The conclusion that
 9 DraftKings knew the parties may not be diverse and chose to remove anyway is
 10 inescapable. That is not how removal is supposed to work. *Harris*, 425 F.3d at 694.
 11 Because "the relevant case law clearly foreclosed the defendant's basis of removal,"
 12 the removal was objectively unreasonable. *Lussier v. Dollar Tree Stores, Inc.*, 518
 13 F.3d 1062, 1066 (9th Cir. 2008).

14 The Court's prompt order recognized this basic defect in DraftKings' Notice.
 15 The Court noted that "a party seeking to invoke diversity jurisdiction should be able
 16 to allege affirmatively the actual citizenship of the relevant parties," and that
 17 DraftKings had "not offer[ed] facts probative of the citizenship of FVP's owners or
 18 members" under *Johnson*. (Case No. 24-cv-00918, ECF No. 14 at 1-2 (citing
 19 *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).) Because
 20 DraftKings failed to establish (or do anything to obtain) the information necessary to
 21 establish the citizenship of Fanatics VIP, it failed to carry its burden on removal.
 22 (*Id.* at 2.)

23 The lack of a legal basis for removal alone warrants an award of fees. But
 24 DraftKings' conduct only underscores why relief is appropriate. DraftKings
 25 neglected to undertake the most basic investigation into the jurisdictional facts. It
 26 did not even reach out to Plaintiffs to inquire about the citizenship of Fanatics VIP.
 27 It simply removed in the middle of the night before Plaintiffs could be heard in state
 28 court the following morning. The morning after the removal, it was *Plaintiffs* who

1 sought to meet and confer to redress the situation without wasting the parties’ and
2 the court’s resources. Plaintiffs explained that Fanatics VIP “is a Nevada citizen”;
3 asked whether DraftKings “need[ed] more information”; and requested that
4 “DraftKings stipulate to remand of the proceedings” because “time is of the
5 essence.” (Case No. 2:24-cv-00997, ECF No. 1-24 (Conley Decl. Ex. C).)
6 DraftKings’ counsel did not respond, and Plaintiffs were forced to seek emergency
7 relief.

8 Fundamentally, DraftKings’ removal was improper under *Harris*. But even
9 after learning about the citizenship of Fanatics VIP—including through the sworn
10 declaration submitted with Plaintiffs’ remand papers—DraftKings refused to
11 stipulate to a remand. (Case No. 2:24-cv-00997, ECF No. 1-24 (Conley Decl. Ex.
12 C).) Instead, DraftKings sought to impose further delays, saying it would oppose
13 remand, demanding documents about Fanatics VIP’s corporate structure, and
14 declining to say why it had failed to investigate the citizenship of the parties before
15 removing the case a mere nine hours after receiving the complaint. (*Id.*)

16 The reason DraftKings refused to promptly correct its deficient removal is
17 clear. For DraftKings, the merits of the removal were irrelevant. Its decision to
18 remove was reflexive and strategic—a tactic to delay the pending state court
19 proceedings, deny Mr. Hermalyn his opportunity to be heard ex parte in state court
20 the day after filing his complaint, and buy time to institute its own proceedings for
21 emergency relief in another forum. In similar circumstances, courts have
22 determined this kind of conduct to be not just objectively unreasonable, but
23 sanctionable. *Cf. In re Silberkraus*, 336 F.3d 864, 871 (9th Cir. 2003) (upholding
24 the imposition of sanctions, where filing a bankruptcy petition days before an
25 important state court deadline to trigger an automatic stay amounted to “bad faith”);
26 *see also* 28 U.S.C. § 1446(a) (notice of removal must be “signed pursuant to Rule
27 11”); *Harris*, 425 F.3d at 697 (the rule that removability is determined from the face
28

1 of the pleadings should alleviate “pressure to file a premature notice of removal”
 2 that “may lead to the imposition of Rule 11 sanctions”).

3 **2. The Second Removal Was Executed Without Facts or**
 4 **Evidence and Similarly Sought Only to Delay the Pending**
State Court Proceedings

5 DraftKings’ second attempt at removal was equally strategic—and equally
 6 baseless. To start, DraftKings removed within hours of receiving the Court’s
 7 remand order, again in the middle of the night and after being served with ex parte
 8 papers for a state court hearing. DraftKings did not consult with Plaintiffs regarding
 9 its new harebrained theory of removability and apparently did not investigate
 10 whether the theory had a basis in law. DraftKings also failed to file the required
 11 Notice of Related Case that would have immediately alerted the Court of this second
 12 removal, mere hours after the Court’s remand order. *See* C.D. Cal. Local Rule 83-
 13 1.3.1. Relying on overheated rhetoric and sensational allegations, the Notice of
 14 Removal accused Plaintiffs of perpetrating “the most egregious attempt to
 15 fraudulently circumvent diversity jurisdiction that counsel has ever seen.” (Case
 16 No. 2:24-cv-00997, ECF No. 1 at 9.) But again, DraftKings’ invective lacked any
 17 actual support in law or in fact and appears to have been undertaken for improper
 18 purposes.

19 *First:* DraftKings relied on the “fraudulent joinder” doctrine—but that
 20 doctrine applies to non-diverse *defendants* who have been joined to destroy
 21 diversity. The doctrine has not been extended in the Ninth Circuit to purportedly
 22 fraudulently joined plaintiffs. *See Apilado v. Bank of Am., N.A.*, 2019 U.S. LEXIS
 23 145454, at *7-10 (D. Haw. Aug. 27, 2019) (noting that “Ninth Circuit cases
 24 addressing the doctrine apply it exclusively to defendants”).

25 *Second*, and more significantly: Even assuming DraftKings had a good faith
 26 legal argument for expanding the doctrine, the Notice of Removal relied entirely on
 27 unsupported speculation, falling far short of the applicable standard for fraudulent
 28 joinder. *See Grancare, LLC*, 889 F.3d at 548.

1 Fanatics VIP was created so that Fanatics could employ Mr. Hermalyn as the
 2 head of its Los Angeles office and oversee “the planned consolidation of the greater
 3 Los Angeles-area offices . . . into a single location.” (Case No. 2:24-cv-00918, ECF
 4 No. 1-5 (Hermalyn Decl. ¶ 7).) There is nothing untoward about a company
 5 structuring itself to take advantage of favorable state law. DraftKings cited no
 6 authority for the proposition that locating a subsidiary in a particular jurisdiction for
 7 that purpose constitutes fraud. *Cf. Plush Lounge Las Vegas, LLC v. Lalji*, 2010 WL
 8 5094238, at *4 (C.D. Cal. Dec. 7, 2010) (“[I]t would require a quantum leap in logic
 9 to conclude from [the fraudulent/collusive assignment of claim doctrine] that [a
 10 court] can examine the motivation behind the assignment of an interest in an LLC
 11 (or the addition of a diversity destroying new member into the LLC.”). Nor is it
 12 unusual for a new corporate entity to be formed concurrently with organizational
 13 and leadership changes. And it is undisputed that Fanatics VIP is, in fact, Mr.
 14 Hermalyn’s employer and, as such, possesses a valid claim against DraftKings
 15 under California law. *See* Cal. Bus. & Prof. Code §§ 16600, 16600.5; *Application*
 16 *Grp., Inc. v. Hunter Grp., Inc.*, 61 Cal. App. 4th 881, 902 (1998).

17 While DraftKings accused Plaintiffs of fraud in the pleading of jurisdictional
 18 facts, that accusation was founded on nothing more than “conjecture and invective.”
 19 (Case No. 2:24-cv-00997, ECF No. 19 at 2.) As the Court recognized in its order:

20 Beyond speculation, Defendant offers no evidence of fraud. It
 21 supposes that a nascent company can have no headquarters, can employ
 22 no people, and can maintain no business relationships. No facts
 23 support these arguments, which blissfully ignore the possibility that
 24 FVP may have inherited these components of its business from a
 predecessor organization. Defendant offers no evidence of untoward
acts by FVP that might support a finding of fraud

25 (Case No. 2:24-cv-00997, ECF No. 19 at 2 (emphasis added).) The Court
 26 recognized that “Plaintiffs have not falsely pleaded anything bearing on jurisdiction
 27 in federal court,” as they did not plead “*anything* about FVP’s citizenship.” (*Id.* at
 28

3.) Again, Plaintiffs were not required to do so, since they did not bring their claims in federal court. *See Harris*, 425 F.3d at 693. Although it hardly bears saying, it is objectively unreasonable for a party to remove based purely on “conjecture and invective,” with “no evidence” and “[n]o facts” to support its position. (*Id.*)

Finally: The failure to file a Notice of Related Case suggests that DraftKings wanted to avoid the case being reassigned to this Court quickly. Local Rule 83-1.3.1 requires the filing of such a notice. And it is not an arcane rule: DraftKings’ counsel is on record as having filed or received many such notices, and DraftKings’ counsel in this case have filed Notices of Related Case on the same day as Notices of Removal. (*See Kristovich Decl.* ¶¶ 6-7, Exs. E-F.)

B. Because Both Removals Were Objectively Unreasonable, Attorneys’ Fees Are Warranted

In executing both improper removals, DraftKings has demonstrated indifference to the merits of its legal theories and factual allegations and has evidently sought removal only as a ploy for delay. Fees are warranted under 28 U.S.C. § 1447(c) because these removals were objectively unreasonable. *See, e.g., Doe ex rel. Hughes v. Martinez*, 674 F. Supp. 2d 1282, 1286 (D.N.M. 2009) (attorney’s refusal to dismiss the case after the improper removal was brought to his attention “is the type of abusive litigation practice” that warrants an award of attorneys’ fees under 28 U.S.C. § 1927); *McPhatter v. Sweitzer*, 401 F. Supp. 2d 468, 479 (M.D.N.C. 2005) (awarding fees where defendants “forced Plaintiffs to come to federal court for a second time, which has complicated, delayed, and increased the cost of their state court action” and where the “support for the Second Removal was weak, and was not substantially different from that offered by Defendants in support of their first removal”); *Letner v. Unum Life Ins. Co. of Am.*, 203 F. Supp. 2d 1291, 1302 (N.D. Fla. 2001) (awarding fees where the case “was removed without a scintilla of legitimate evidence that would support the exercise of federal jurisdiction”).

Further, there are many tools at the Court’s disposal to address DraftKings’ disturbing litigation conduct, all of which allow for the imposition of fees in this case. *See, e.g.*, Fed. R. Civ. P. 11(c)(3) (permitting sanctions on the court’s own motion); *Lu v. United States*, 921 F.3d 850, 859 (9th Cir. 2019) (recognizing the “inherent powers” of federal courts to “fashion an appropriate sanction for conduct which abuses the judicial process” (internal quotation marks omitted)); 28 U.S.C. § 1927 (authorizing sanctions against an attorney who “multiplies the proceedings in any case unreasonably and vexatiously”); C.D. Cal. Local Rule 11-9 (noting “frivolous motions . . . subject[] the offender at the discretion of the Court to the sanctions of L.R. 83-7”); C.D. Cal. Local Rule 83-7 (providing for monetary sanctions for “willful, grossly negligent, or reckless” conduct in violation of the rules and “imposition of costs and attorneys’ fees to opposing counsel” where conduct “rises to the level of bad faith and/or a willful disobedience of a court order”). Because DraftKings’ improper removals “delay[ed] resolution of the case, impose[d] additional costs on both parties, and waste[d] judicial resources,” assessing fees on remand is warranted. *Martin*, 546 U.S. at 140. As discussed below, the requested pre-filing restriction is also appropriate. *See infra*, at 21-22.

C. The Attorneys’ Fees Sought by Plaintiffs Are Reasonable

“Under § 1447(c), expenses may be incurred by parties as soon as the process of removal is undertaken and until and including the process of remand.” *Tenner v. Zurek*, 168 F.3d 328, 330 (7th Cir. 1999). “[A] party’s costs of opposing removal, seeking remand, and other expenses incurred because of the improper removal may be awarded.” *Avitts v. Amoco Prod. Co.*, 111 F.3d 30, 32 (5th Cir. 1997). “Such costs and fees could include items distinct from those incurred on a motion to remand.” *Mints v. Educ. Testing Serv.*, 99 F.3d 1253, 1259 (3d Cir. 1996).

“Section 1447(c) has been recognized as a fee-shifting statute, and in the Ninth Circuit, under a fee-shifting statute, the court must calculate awards for attorneys’ fees using the lodestar method.” *TPCO US Holding, LLC v. Fussell*,

2023 WL 5111986, at *1 (N.D. Cal. Aug. 9, 2023) (cleaned up). “The lodestar is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Id.* (internal quotation marks omitted). “Because the lodestar figure is presumptively reasonable, adjustments should be made only in rare cases.” *Albion Pac. Prop. Res., LLC v. Seligman*, 329 F. Supp. 2d 1163, 1167 (N.D. Cal. 2004).

Based on the lodestar method, and as set forth in the accompanying Declarations of Brad D. Brian and David C. Armillei, Plaintiffs seek an award of \$193,326 in attorneys’ fees for the first removal and \$117,278 in attorneys’ fees for the second removal. For the reasons discussed below, and as supported by the declarations, these fees were reasonably and necessarily incurred as a result of DraftKings’ objectively unreasonable removals.

1. Plaintiffs’ Counsel’s Rates Are Reasonable

In determining the reasonable hourly rate of an attorney, the Court must look to the “rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008); *see also Jordan v. Multnomah Cnty.*, 815 F.2d 1258, 1262 (9th Cir. 1987) (“[t]he prevailing market rate in the community is indicative of a reasonable hourly rate.”).

Plaintiffs’ request is based on reasonable hourly rates. The qualifications of Plaintiffs’ counsel are set forth in the accompanying declarations along with their rates charged in this litigation. (Brian Decl. ¶¶ 3, 14; Armillei Decl. ¶¶ 3, 14.) While the rates for individual attorneys vary, the weighted average rate for this fee request is about \$1279 per hour. That rate is squarely within the billing rates approved as reasonable by a number of Los Angeles courts. As courts have recognized, attorney billing rates have exceeded \$1,000 per hour in the Los Angeles legal market since at least 2013. *See, e.g., Order (re Attorneys’ Fees), Pinter-Brown v. Univ. of Cal. L.A.*, No. BC624838, 2018 WL 4041789, at *6 (L.A. Super. Ct.

1 Aug. 3, 2018). And, as is typical in the legal industry, Plaintiffs’ counsel’s firms
 2 both have a general practice of adjusting standard rates each year, taking into
 3 account a variety of factors including available market data concerning rates
 4 charged by peer firms. (Brian Decl. ¶ 13; Armillei Decl. ¶ 13.) Courts have
 5 regularly found comparable rates to be reasonable based on the market and the skill,
 6 experience, and representation of counsel. *See, e.g., Flo & Eddie, Inc. v. Sirius XM*
 7 *Radio, Inc.*, 2017 WL 4685536, at *8 (C.D. Cal. May 8, 2017) (hourly rate of \$1200
 8 was reasonable, based on the skill and experience of the attorneys).³ Moreover,
 9 Plaintiffs understand that DraftKings’ counsel at Gibson Dunn & Crutcher charges
 10 rates within the same range as Plaintiffs’ counsel. *See Isaacs v. USC Keck Sch. of*
 11 *Med.*, No. 2:19-cv-08000-DSF-RAO, ECF No. 12 (C.D. Cal. May 15, 2020)
 12 (finding Gibson, Dunn & Crutcher’s 2020 rates, including Mr. Fogelman’s rate of
 13 \$1350 per hour, were reasonable and “within the range charged in the local market
 14 for attorneys of comparable quality and size.”).

15
 16
 17
 18
 19
 20 ³ *See, e.g., Orthopaedic Hosp. v. Encore Med., L.P.*, 2021 WL 5449041, at *13
 21 (S.D. Cal. Nov. 19, 2021) (finding \$1,260 for partners and \$1,065 for associates
 22 reasonable); *CliniComp Int’l, Inc. v. Cerner Corp.*, 2023 WL 2604816, at *3–5
 23 (S.D. Cal. Mar. 22, 2023) (\$1,465 for partners and \$805 for associates); *NuVasive,*
 24 *Inc. v. Alphatec Holdings, Inc.*, 2020 WL 6876300, at *3 (S.D. Cal. Mar. 20, 2020)
 25 (\$1,005 and \$860 for partners); *Superior Consulting Servs., Inc. v. Steeves-Kiss*,
 26 2018 WL 2183295, at *5 (N.D. Cal. May 11, 2018) (\$975 per hour for partners);
 27 *Gutierrez v. Wells Fargo Bank, N.A.*, 2015 WL 2438274, at *5 (N.D. Cal. May 21,
 28 2015) (same); *Healthier Choices Mgmt. Corp. v. Philip Morris USA, Inc.*, 2022 WL
 870206, at *4 (N.D. Ga. Feb. 22, 2022) (\$1,318 for partners and \$935 for
 associates), *vacated on other grounds*, 65 F.4th 667; *Hyosung TNS, Inc. v. Diebold*
Nixdorf, Inc., 2021 WL 1597903, at *2 & n.2 (N.D. Tex. Mar. 19, 2021) (\$950 per
 hour).

Courts across the country have repeatedly and consistently held that the hourly rates of Munger, Tolles & Olson⁴ and Quinn Emanuel⁵ are reasonable, based

⁴ *Youth Just. Coal. v. City of L.A.*, 2021 WL 9731621, at *6 (C.D. Cal. June 8, 2021) (awarding fees including Munger Tolles billing rates of \$1,050 per hour); *Vasquez v. Rackauckas*, 2011 WL 3320482, at *1 (C.D. Cal. July 29, 2011) (“the rates sought and approved are within the range of reasonable market rates for attorneys of comparable skill, experience and reputation”); *Lauderdale v. City of Long Beach*, 2010 WL 11570514, at *14 (C.D. Cal. Jan. 11, 2010) (awarding fees and finding Munger Tolles attorneys’ “hourly rates [were] reasonable”); *Radiological Specialists, Inc. v. Wells Fargo Bank, N.A.*, No. 20STCV03336 (L.A. Super. Ct. Dec. 15, 2021) (holding Munger Tolles billing rates were “in line with general market rates”); *Monster LLC v. Beats Elec. LLC*, No. BC595235 (L.A. Sup. Ct. Oct. 12, 2017) (affirming Munger Tolles fees request with billing rates of \$1,245 per hour; noting that the court was “very familiar with the hourly rates of attorneys in Los Angeles, including those of the most experienced business litigation firms such as Munger Tolles” and holding that the “rates charged here are well within the current range of those in similarly situated firms for litigation of this nature”); *Charney v. Standard Gen., L.P.*, No. BC581130 (L.A. Super. Ct. Sept. 22, 2017) (awarding all requested fees including Munger Tolles attorney billing rates).

⁵ *Blattman v. Siebel*, No. 15-cv-530 (D. Del. Dec. 6, 2021) (ECF No. 434) (finding attorneys’ fees requested by Quinn Emanuel reasonable and declining to reduce the fee award by the requested percentage); *Proofpoint, Inc. v. Vade Secure, Inc.*, No. 3:19-cv-4238 (N.D. Cal. Dec. 17, 2020) (ECF No. 376 at 7) (finding that Quinn Emanuel attorneys “are experienced and seasoned practitioners; that they are employed at a large international firm with a highly regarded reputation; that they have highly specialized . . . backgrounds” and that the firm’s fees are reasonable); *Liqwd, Inc. v. L’Oréal USA, Inc.*, No. 17-cv-14 (D. Del. Dec. 16, 2019) (ECF No. 1162 at 25-28) (finding that Quinn Emanuel’s “hourly rates and [] hours spent [are] reasonable”); *Transweb, LLC v. 3M Innovative Props. Co.*, No. 2:10-cv-04413 (D.N.J. Sept. 24, 2013) (ECF No. 567 at 33) (Special Master’s ruling finding that Quinn Emanuel was a “premier litigation firm” and that “the hourly rates charged by Quinn Emanuel are within the range of prevailing rates for premium quality counsel”); *Riverside Cnty. Dept. of Mental Health v. A.S.*, No. 5:08-cv-503 (C.D. Cal. Feb. 22, 2010) (ECF No. 123) (awarding full amount of attorneys’ fees sought for work performed by Quinn Emanuel); *Bistro Executive, Inc. v. Rewards Network, Inc.*, No. 2:04-cv-4640 (C.D. Cal. Nov. 19, 2007) (ECF No. 357 at 6-8) (finding Quinn Emanuel’s attorney and staff rates and hours were reasonable).

on the qualifications of their attorneys, and comparable to rates charged by firms providing similarly high-quality representation.

2. Plaintiffs' Fees for the First Improper Removal Are Reasonable

For the first removal, Plaintiffs seek \$193,326 in attorneys' fees. This amount accounts for almost 150 hours spent by 9 attorneys on work in the federal court.

The hours spent opposing DraftKings' attempt to remand the case were reasonable. As explained in the supporting declarations, the hours expended reflect the following categories of tasks, all of which were directly related to DraftKings' efforts to remove the case:

- a) reviewing the First Notice of Removal and supporting documents;
- b) meet-and-confer correspondence explaining to DraftKings why removal was improper and attempting to obtain a stipulation to a remand;
- c) preparing case-initiating documents, such as the notice of interested parties, that are required in federal court;
- d) researching, drafting, and filing the ex parte application to shorten time;
- e) researching, drafting, and filing the motion for remand;
- f) preparing for a potential argument on the ex parte application and/or motion to remand;
- g) researching and drafting a reply brief that was not filed before the Court issued its remand order; and
- h) internal correspondence and conferences regarding the strategy and substance of this response.

(Brian Decl. ¶¶ 8-9; Armillei Decl. ¶¶ 8-9.)

As this list demonstrates, the hours expended by Plaintiffs' counsel were necessary because of DraftKings' litigation tactics. DraftKings repeatedly refused to resolve these issues by stipulation or through the meet-and-confer process, and

1 instead insisted on opposing Plaintiffs’ efforts to remand the case to the rightful
 2 state forum. The response was made more complicated by DraftKings’ middle-of-
 3 the-night removal, mere hours before Mr. Hermalyn expected to be heard in state
 4 court on his ex parte application for emergency relief. (Brian Decl. ¶ 7; Armillei
 5 Decl. ¶ 7.) Plaintiffs were required to spend time researching the fastest possible
 6 way to obtain relief in federal court and return to state court, while coordinating
 7 across the separately represented Plaintiffs here. (*Id.*) The reasonableness of
 8 Plaintiffs’ fee request is also supported by the fact that Plaintiffs have not included
 9 in their request significant amounts of time spent on this litigation—namely, time
 10 spent solely on revising and resubmitting Mr. Hermalyn’s state court papers. (Brian
 11 Decl. ¶ 5; Armillei Decl. ¶ 5.)

12 The requested fee is comparable to awards granted by other courts for time
 13 spent litigating improper removals. *See, e.g., Cleanup N. Brooklyn v. Brooklyn*
 14 *Transfer LLC*, 373 F. Supp. 3d 398 (E.D.N.Y. 2019) (awarding total fees and costs
 15 for about 350 actual hours—reduced by the court to 230 hours of compensable
 16 time); *CMGRP, Inc. v. Agency for the Performing Arts, Inc.*, 2016 WL 9080233, at
 17 *1 (S.D.N.Y. July 8, 2016) (awarding fees for about 200 hours of attorney time
 18 incurred as a result of a single improper removal); *Capital2Market Consulting, LLC*
 19 *v. Camston Wrathier, LLC*, 2023 WL 2366975, at *8 (S.D.N.Y. Mar. 6, 2023)
 20 (awarding attorneys’ fees and sanctions for about 100 hours of attorney work
 21 incurred as a result of an improper removal). Here, because much of the work had
 22 to be done in essentially a day, it was an “all hands” task that required a significant
 23 number of attorneys pitching in.

24 **3. Plaintiffs’ Fees for the Second Improper Removal Are** 25 **Reasonable**

26 For the second removal, Plaintiffs seek \$117,278 in attorneys’ fees. This
 27 amount accounts for just over 90 hours spent by 8 attorneys on work in the federal
 28 court.

1 The hours spent opposing DraftKings’ *second* attempt to remove the case
 2 were also reasonable. As explained in the supporting declarations, the hours
 3 expended reflect the following categories of tasks, all of which were directly related
 4 to DraftKings’ efforts to remove the case a second time:

- 5 a) reviewing the Second Notice of Removal and supporting documents;
- 6 b) preparing the Notice of Related Case to inform the Court—as
 7 DraftKings failed to do—that the identical case had been removed
 8 again, the same day it had just been remanded;
- 9 c) researching, drafting, and filing a second ex parte application to shorten
 10 time, this time under the emergency rules;
- 11 d) researching, drafting, and filing the second motion for remand, this
 12 time addressing DraftKings’ new baseless but complicated legal theory;
- 13 e) reviewing DraftKings’ opposition to the remand motion, and
 14 researching, drafting, and filing a reply;
- 15 f) reviewing DraftKings’ supplemental opposition to the remand motion,
 16 and researching, drafting, and filing a reply;
- 17 g) preparing for a second potential argument on the ex parte application
 18 and/or motion to remand; and
- 19 h) internal correspondence and conferences regarding the strategy and
 20 substance of this response.

21 (Brian Decl. ¶¶ 10-11; Armillei Decl. ¶¶ 10-11.)

22 This list demonstrates that the hours expended by Plaintiffs’ counsel were a
 23 necessary response to DraftKings’ improper tactics. Plaintiffs’ second set of filings
 24 was not a simple refresh of its first set of federal papers. In its second Notice of
 25 Removal, DraftKings advanced new arguments that required Plaintiffs to do
 26 additional research and draft wholly new briefs and supporting materials. (Brian
 27 Decl. ¶ 10; Armillei Decl. ¶ 10.) Plaintiffs also filed a “supplemental” opposition
 28 that required a further reply, and Plaintiffs failed to file a Notice of Related Case,

1 necessitating additional work to ensure that the second removal was related to the
 2 first. The fees sought for this second removal are comparable to those incurred as a
 3 result of the first, and for the same reasons, represent reasonable compensation for
 4 the time spent as a result of DraftKings’ unnecessary and vexatious tactics.

5 **D. The Court Should Require DraftKings to Seek Prior Approval**
 6 **Before Removing the Case a Third Time**

7 DraftKings’ successive, baseless removals constitute an abuse of process,
 8 undertaken for the improper purpose of preventing Mr. Hermalyn from seeking
 9 immediate relief in state court. As of the filing of this brief, Mr. Hermalyn *still* has
 10 not had an opportunity to be heard on an application for emergency relief that he
 11 attempted to file *over a week ago*. Meanwhile, DraftKings’ removals have achieved
 12 exactly what they were designed to do—hamstring Mr. Hermalyn while DraftKings
 13 raced to file its own lawsuit, and obtain its own temporary injunction, in another
 14 forum.

15 Plaintiffs ask that DraftKings be prevented from engaging in this conduct
 16 again. Under the All Writs Act, 28 U.S.C. § 1651(a), this Court has authority to
 17 enter a pre-filing order requiring DraftKings to obtain permission before attempting
 18 additional removals of Plaintiffs’ state-court case. *Molski v. Evergreen Dynasty*
 19 *Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007). Plaintiffs believe that such an order is
 20 warranted, given the “frivolous” and “harassing nature” of DraftKings’ actions thus
 21 far in the litigation. *Id.*; *see also* C.D. Cal. Local Rule 83-8.3 (authorizing pre-filing
 22 order where a litigant has “abused the Court’s process and is likely to continue such
 23 abuse, unless protective measures are taken”). Courts have entered similar orders in
 24 the past to prevent litigants from effecting successive improper removals. *U.S. Bank*
 25 *Nat’l Ass’n v. Orr*, 2019 WL 2180201, at *1 (N.D. Cal. Feb. 28, 2019), *adopting R.*
 26 *& R.*, 2019 WL 2183369 (N.D. Cal. Feb. 7, 2019); *Breckenridge Prop. Fund 2016,*
 27 *LLC v. Eriks*, 2018 WL 4772085, at *6 (W.D. Wash. Oct. 3, 2018); *Redwood Prop.*
 28 *Inv’s II, LLC v. Gaspar*, 2018 WL 4378756, at *1 (N.D. Cal. Feb. 5, 2018),

1 *adopting R. & R.*, 2018 WL 4378831 (N.D. Cal. Jan. 11, 2018); *Schneider v.*
2 *Roberts*, 2014 WL 1891416, at *1 (C.D. Cal. May 9, 2014).

3 **IV. CONCLUSION**

4 For the foregoing reasons, Plaintiffs respectfully request that the Court award
5 Plaintiffs payment of attorneys' fees incurred as result of DraftKings' successive
6 improper removals, impose a pre-filing restriction, and order any other relief the
7 Court deems appropriate.⁶

8
9
10 DATED: February 12, 2024

Respectfully submitted,

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25 ⁶ Plaintiffs reserve the right to seek attorneys' fees incurred preparing this Motion.
26 Those fees are still indeterminate, pending any reply brief and oral argument.

27 ⁷ Signed electronically by Brad D. Brian with the concurrence of David C. Armillei,
28 pursuant to L.R. 5-1(i)(3).

Local Rule 11-6.1 Certificate of Compliance

The undersigned, counsel of record for Michael Z. Hermalyn, certifies that this brief contains 6,991 words, which complies with the word limit of L.R. 11-6.1.

DATED: February 12, 2024

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